

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

EMMITT HAROLD ALDRICH,)	Case No. 1:18-cv-2891
)	
Petitioner,)	Judge J. Philip Calabrese
)	
v.)	Magistrate Judge
)	William H. Baughman, Jr.
BRIGHAM SLOAN, Warden,)	
)	
Respondent.)	
)	

ORDER

Before the Court is the Magistrate Judge’s Report and Recommendation (ECF No. 12) in this habeas action. The Magistrate Judge recommends that the Court dismiss in part and deny in part the petition for a writ of habeas corpus, which would have the effect of denying relief.

In the Report and Recommendation, the Magistrate Judge summarized the factual and procedural history of the case. (ECF No. 12, PageID #270–73.) In short, Mr. Aldrich is serving an aggregate sentence of eight years in prison following his plea of guilty to charges stemming from a vehicular homicide. (*Id.*, PageID #270–71.) Petitioner unsuccessfully challenged his conviction on direct appeal and through collateral proceedings in State court before commencing this action. (*Id.*, PageID #272–73.)

Petitioner asserts three grounds for relief. (ECF No. 1, PageID #5–9; ECF No. 1-1, PageID #18, 24 & 30.) The Magistrate Judge recommends that the Court deny ground one on the merits because the State court’s adjudication is not an

unreasonable application of federal constitutional law as determined by the Supreme Court. (ECF No. 12, PageID #279.) With respect to ground two, the Magistrate Judge recommends denying the claim because the decision of the State courts is not contrary to clearly established federal law governing the validity of pleas. (*Id.*, PageID #282.) Finally, the Magistrate Judge recommends dismissal of ground three, which challenges Petitioner's sentence, as an uncognizable claim. (*Id.*, PageID #287.)

The Report and Recommendation stated that any objections were due fourteen days after service and advised Petitioner that failure to timely object may waive the right to appeal the Court's order. (*Id.*, PageID #288.) The Report and Recommendation was filed on the docket on January 7, 2022 (ECF No. 12) and mailed to Petitioner the same day. Nonetheless, Petitioner has failed to object to the Magistrate Judge's Report and Recommendation.

Under the law of this Circuit, "failure to object to a magistrate judge's Report and Recommendation results in a *waiver* of appeal on that issue as long as the magistrate judge informs parties of that potential waiver." *United States v. Wandahsega*, 924 F.3d 868, 878 (6th Cir. 2019) (emphasis added); *United States v. Walters*, 638 F.2d 947, 949–50 (6th Cir. 1981); *see also Thomas v. Arn*, 474 U.S. 140, 152 (1985) (holding that the Sixth Circuit's waiver rule is within its supervisory powers and "[t]here is no indication that Congress, in enacting § 636(b)(1)(C), intended to require a district judge to review a magistrate's report to which no objections are filed").

Recently, the Sixth Circuit clarified this rule: failure to object is not a waiver, but a forfeiture. *Berkshire v. Beauvais*, 928 F.3d 520, 530 (6th Cir. 2019) (“We clarify that forfeiture, rather than waiver, is the relevant term here.”). This is so because “[w]aiver is different than forfeiture.” *United States v. Orlando*, 507 U.S. 725, 733 (1993); *Freytag v. Commissioner*, 501 U.S. 868, 894 n.2 (1991) (Scalia, J., concurring) (noting the Supreme Court’s cases “often used [waiver and forfeiture] interchangeably,” but that “[t]he two are really not the same.”). This difference matters because forfeited issues may, in certain circumstances, nevertheless be considered on appeal.” *Berkshire*, 928 F.3d at 530 (citing *Harris v. Klare*, 902 F.3d 630, 635–36 (6th Cir. 2018)).

In any event, the time for filing objections to the Report and Recommendation has passed. Petitioner neither objected, nor provided some legitimate reason why he failed to do so. Further, upon the Court’s independent review of the record, there does not appear to be clear error in the Magistrate Judge’s Report and Recommendation. Therefore, the Court **ADOPTS** the Report and Recommendation (ECF No. 12) and **DISMISSES** the action **WITH PREJUDICE**. The Court further **DIRECTS** the Clerk to enter judgment accordingly.

SO ORDERED.

Dated: February 8, 2022



J. Philip Calabrese
United States District Judge
Northern District of Ohio